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NO. COA11-121  
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

STATE OF NORTH CAROLINA,

v.

Guilford County  
No. 08CRS78489

RODERICK DARNELL MILLER

Appeal by defendant from judgment entered on or about 19 August 2010 by Judge A. Moses Massey in Superior Court, Guilford County. Heard in the Court of Appeals 29 August 2011.

*Attorney General Roy A. Cooper, III, by Assistant Attorney General Rajeev K. Premakumar, for the State.*

*William D. Auman, for defendant-appellant.*

STROUD, Judge.

Roderick Darnell Miller ("defendant") appeals from revocation of probation and activation of a sentence of six to eight months imposed upon a conviction of felony speeding to elude arrest. For the reasons stated herein, we overrule the two contentions brought forward in defendant's brief.

Defendant's probation officer filed a violation report on 10 December 2009 alleging defendant violated conditions of

probation by (1) testing positive for marijuana on three occasions, (2) being away from his residence after curfew, and (3) failing to report for monthly TASC appointments for four consecutive months. On 23 March 2010, another probation officer filed a violation report alleging defendant violated conditions of probation by (1) failing to report to his probation officer on 15 February 2010, and (2) committing criminal offenses in Guilford County and Durham County.

The trial court joined the two reports for hearing on 16 August 2010. At the conclusion of the hearing, the court found that defendant willfully and without lawful excuse committed the violations alleged in the 10 December 2009 violation report and the first violation and part of the second violation alleged in the 19 March 2010 report insofar as defendant was convicted in Durham County of two counts of assault on a female and assault with a deadly weapon. The court ordered activation of defendant's sentence. Defendant appealed.

Defendant first contends the trial court abused its discretion by denying his motion for a continuance of the hearing to a later date. "A motion for a continuance is ordinarily addressed to the sound discretion of the trial court." *State v. Smith*, 310 N.C. 108, 111, 310 S.E.2d 320, 323

(1984). "In such cases, the trial court's ruling will not be disturbed unless it is manifestly unsupported by reason, which is to say it is so arbitrary that it could not have been the result of a reasoned decision." *State v. T.D.R.*, 347 N.C. 489, 503, 495 S.E.2d 700, 708 (1998) (citation omitted). "[W]hen such a motion raises a constitutional issue, the trial court's action upon it involves a question of law which is fully reviewable by an examination of the particular circumstances of each case." *State v. Searles*, 304 N.C. 149, 153, 282 S.E.2d 430, 433 (1981) (citation omitted). "Regardless of whether the motion raises a constitutional issue or not, a denial of a motion to continue is only grounds for a new trial when [the] defendant shows both that the denial was erroneous, and that he suffered prejudice as a result of the error." *State v. Walls*, 342 N.C. 1, 24, 463 S.E.2d 738, 748 (1995), *cert. denied*, 517 U.S. 1197, 134 L.Ed. 2d 794 (1996).

Defendant's proffered reason at trial for seeking a continuance was so he could obtain one or more documents from Durham County to show he was promised that his guilty plea to the offense of misdemeanor assault on a female would not be considered as a violation of probation. We fail to perceive how the denial of the motion was erroneous or how defendant was

prejudiced by the denial of the motion. Defendant's counsel conceded at the hearing that a district judge in Durham County has no authority to require a superior court judge in Guilford County not to find a violation of a condition of probation. Moreover, the violation reports alleged, and the trial court ultimately found, multiple violations of probation independent of and unrelated to the Durham County cases.

Defendant's other contention is that the trial court erred by revoking probation because the evidence did not support a conclusion that his failure to comply with the terms and conditions of his probation was willful. He argues the evidence consisted mostly of a review of defendant's file by defendant's probation officer who lacked personal knowledge of the matters alleged in the first violation report.

All that is required in a hearing [upon a violation report] is that the evidence be such as to reasonably satisfy the judge in the exercise of his sound discretion that the defendant has willfully violated a valid condition of probation or that the defendant has violated without lawful excuse a valid condition upon which the sentence was suspended.

*State v. Hewett*, 270 N.C. 348, 353, 154 S.E.2d 476, 480 (1967). In *State v. Duncan*, 270 N.C. 241, 246, 154 S.E.2d 53, 58 (1967), our Supreme Court noted that the trial court had "the verified

report of the [probation officer] stating in detail alleged violations of the conditions of probation by defendant. [Our Supreme Court held] that that was competent evidence." "[T]he burden is on the defendant to present competent evidence of his inability to comply; . . . otherwise, evidence of defendant's failure to comply may justify a finding that defendant's failure to comply was willful or without lawful excuse." *State v. Crouch*, 74 N.C. App. 565, 567, 328 S.E.2d 833, 835 (1985).

In the case at bar, the trial court received the probation violation reports into evidence. The court also heard the testimony of the probation officer regarding the violations stated in the reports. Among other things, the probation officer testified that defendant failed to keep an appointment with the officer on 15 February 2010 and failed to inform the probation officer beforehand of his inability to keep the appointment. The probation officer testified that both he and defendant's surveillance officer notified defendant on 11 February 2010 of the appointment. The probation officer also testified regarding defendant's convictions of criminal offenses in Durham County during the period of probation. Defendant did not present any credible evidence at the probation revocation hearing to excuse his failure to keep the appointment. He only

offered evidence with regard to the alleged failures to attend TASC sessions and to comply with curfew.

We conclude the evidence supports the trial court's conclusion that defendant willfully and without lawful excuse violated the conditions of probation. "The trial judge, as the finder of the facts, is not required to accept defendant's evidence as true." *State v. Young*, 21 N.C. App. 316, 321, 204 S.E.2d 185, 188 (1974). Evidence which contradicts or disputes the prosecution's evidence "does no more . . . than raise an issue of credibility, which in this proceeding is a question for the trial court to decide." *State v. Darrow*, 83 N.C. App. 647, 649, 351 S.E.2d 138, 140 (1986) (citation omitted).

The judgment revoking probation and activating the sentence is affirmed.

AFFIRMED.

Judges CALABRIA and STEELMAN concur.

Report per Rule 30(e).